

Submitting Counsel on Signature Page

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

In re LIDODERM ANTIRUST LITIGATION

MDL Docket No. 14-md-02521-WHO

**THIS DOCUMENT RELATES TO ALL
CASES**

**STIPULATED PROTECTIVE ORDER
[Proposed]**

1 Disclosure and discovery activity in the actions consolidated for pretrial purposes under
2 this Master File are likely to involve production of confidential, proprietary, or private
3 information for which special protection from public disclosure and from use for any purpose
4 other than prosecuting this litigation would be warranted. Accordingly, the parties hereby
5 stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties
6 acknowledge that this Order does not confer blanket protections on all disclosures or responses to
7 discovery and that the protection it affords extends only to the limited information or items that
8 are entitled under the applicable legal principles to treatment as confidential. The parties further
9 acknowledge, as set forth in Section 7, below, that this Stipulated Protective Order creates no
10 entitlement to file confidential information under seal; Civil Local Rule 79-5 sets forth the
11 procedures that must be followed and reflects the standards that will be applied when a party
12 seeks permission from the Court to file material under seal.

13 **1. SCOPE OF PROTECTIVE ORDER**

14 1.1 This Protective Order shall apply to all documents, things, or information subject
15 to discovery in these actions that is owned, possessed, or controlled by a party or a non-party and
16 that contains the party's or non-party's trade secrets or other confidential research, development
17 or commercial information in accordance with Fed. R. Civ. P. 26(c)(1), or other information
18 required by law or agreement to be kept confidential ("Confidential Discovery Material").
19 Notwithstanding the scope of this Protective Order, the parties recognize that use of Confidential
20 Discovery Material at trial is an issue to be discussed in advance of and addressed as appropriate
21 in the proposed Joint Pretrial Order.

22 **2. CONFIDENTIALITY DESIGNATIONS (TWO-TIER)**

23 2.1 Each party and any non-party shall have the right to designate any Confidential
24 Discovery Material as confidential and subject to this Protective Order, by marking such Material
25 as either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL." It shall be the duty of the party
26 or non-party who seeks to invoke protection under this Protective Order ("Producing Party") to
27 give notice, as set forth below, of the Confidential Discovery Material designated to be covered
28 by this protective Order ("Designated [CONFIDENTIAL or HIGHLY CONFIDENTIAL]

1 Material"). The duty of the parties and of all other persons bound by this Protective Order to
2 maintain the confidentiality of Confidential Discovery Material so designated ("Receiving Party")
3 shall commence with such notice.

4 2.2 Under this Protective Order, Confidential Discovery Material shall be marked
5 "CONFIDENTIAL" if, and only if, the Producing Party in good faith considers the Discovery
6 Material to be, reflect or reveal a trade secret or other confidential research, development or
7 commercial information in accordance with Fed. R. Civ. P. 26(c)(1), or other information
8 required by law or agreement to be kept confidential.

9 2.3 Under this Protective Order, Confidential Discovery Materials can be designated
10 as "HIGHLY CONFIDENTIAL" Material if the Confidential Discovery Material is
11 "CONFIDENTIAL" as set forth in Paragraph 2.2 above and constitutes or reflects trade secrets or
12 other proprietary information; confidential research, development, testing and studies relating to
13 drug products; and/or sensitive financial or strategic commercial information, where the
14 disclosure of the information is likely to cause harm to the competitive position of the Producing
15 Party.

16 2.4 CONFIDENTIAL or HIGHLY CONFIDENTIAL Material, respectively, shall
17 include: (a) all copies, extracts, and complete or partial summaries prepared from such
18 CONFIDENTIAL or HIGHLY CONFIDENTIAL Material; (b) portions of deposition transcripts
19 and exhibits thereto that contain, summarize, or reflect the content of any such CONFIDENTIAL
20 or HIGHLY CONFIDENTIAL Material; (c) portions of briefs, memoranda, or any other writings
21 filed with the Court and exhibits thereto that contain, summarize, or reflect the content of any
22 such CONFIDENTIAL or HIGHLY CONFIDENTIAL Material; (d) written discovery responses
23 and answers that contain, summarize, or reflect the content of any such CONFIDENTIAL or
24 HIGHLY CONFIDENTIAL Material; and (e) deposition testimony designated in accordance
25 with the paragraphs below.

26 2.5 CONFIDENTIAL and HIGHLY CONFIDENTIAL Material shall not include any
27 discovery material which:

- 1 a. is in the public domain at the time of disclosure;
- 2 b. becomes part of the public domain through no fault of a Receiving Party or
- 3 third parties who are not in breach of any obligations to the Producing
- 4 Party;
- 5 c. is information the Receiving Party can show was in its possession prior to
- 6 the time of disclosure; or
- 7 d. is information the Receiving Party receives at a later date from a third party
- 8 properly and rightfully in possession of said information, and not as a result
- 9 of any breach of confidentiality, and properly and rightfully authorized to
- 10 make disclosure without restriction as to disclosure.

11 **3. DESIGNATING MATERIALS AS “CONFIDENTIAL” AND/OR “HIGHLY**
12 **CONFIDENTIAL”**

13 3.1 The designation of information as CONFIDENTIAL and/or HIGHLY
14 CONFIDENTIAL Material for purposes of this Order shall be made in the following manner:

- 15 a. with regard to written material (including transcripts of depositions or other
16 testimony), a legend shall be affixed to each page substantially in the form,
17 “CONFIDENTIAL — Subject to Protective Order” or “HIGHLY
18 CONFIDENTIAL — Subject to Protective Order”; and
- 19 b. with regard to non-written material, such as recordings, magnetic media,
20 photographs and things, a legend substantially in the above form shall be
21 affixed to the material, or a container for it, in any suitable manner.
- 22 c. A Party or non-party that makes original documents or materials available
23 for inspection need not designate them for protection until after the
24 inspecting Party has indicated which material it would like copied and
25 produced. During the inspection and before the designation, and until and
26 unless produced without any confidentiality designation, all of the material
27 made available for inspection shall be deemed to be HIGHLY
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1 CONFIDENTIAL Material. After the inspecting Party has identified the
2 documents it wants copied and produced, the Producing Party shall affix
3 the appropriate legend on each page that contains Confidential Discovery
4 Material.

5 d. Any party may designate any or all portions of depositions taken in these
6 actions as CONFIDENTIAL and/or HIGHLY CONFIDENTIAL Material
7 either (1) by making a statement on the record at the deposition, or (2) by
8 serving notice in writing to counsel of record within thirty (30) days of
9 receiving the transcript of the deposition. Only those portions of a
10 deposition that actually contain CONFIDENTIAL and/or HIGHLY
11 CONFIDENTIAL Material may be so designated. All deposition
12 transcripts will be treated as HIGHLY CONFIDENTIAL Material until a
13 party designates any or all portions of the transcript as CONFIDENTIAL
14 and/or HIGHLY CONFIDENTIAL Material or until thirty (30) days after
15 receipt of the transcript, whichever is earlier. If a designation is made, the
16 CONFIDENTIAL and/or HIGHLY CONFIDENTIAL portions and
17 exhibits, if filed with the Court, shall be subject to the filing requirements
18 set forth in Paragraph 7 below. If any depositions are videotaped or
19 digitally recorded, those portions of the videotape or recording
20 corresponding to portions of the deposition transcript designated as
21 CONFIDENTIAL or HIGHLY CONFIDENTIAL shall be afforded the
22 same status.

23 3.2 Notwithstanding the obligation to timely designate CONFIDENTIAL and/or
24 HIGHLY CONFIDENTIAL Material under the foregoing paragraphs 3.1(a)-(d), the inadvertent
25 or unintentional failure to designate specific Confidential Discovery Material as
26 CONFIDENTIAL and/or HIGHLY CONFIDENTIAL Material shall not be deemed a waiver in
27 whole or in part of the claim of confidentiality. Upon prompt notice from the Producing Party of
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1 such failure to designate, all Receiving Parties shall cooperate to restore the confidentiality of the
2 inadvertently or unintentionally disclosed Confidential Discovery Material. No party shall be
3 held in breach of this Order if, prior to notification of such later -designation, such Confidential
4 Discovery Material had been disclosed or used in a manner inconsistent with such later
5 designation. The Producing Party shall provide substitute copies of the Discovery Material
6 bearing the corrected designation. The Receiving Party shall return or certify the destruction of
7 the undesignated Confidential Discovery Material.

8 **4. DISCLOSURE AND USE OF CONFIDENTIAL DISCOVERY MATERIAL**

9 4.1 Absent an agreement of the Producing Party or an Order to the contrary by this
10 Court or other court of competent jurisdiction, and except as provided in Paragraph 4.4 below,
11 each party and all other persons bound by the terms of this Protective Order shall use any material
12 designated as CONFIDENTIAL and/or HIGHLY CONFIDENTIAL Material by a party or non-
13 party other than itself solely for purposes of these actions, and such Material shall not be used for
14 any other purpose, including, without limitation, any business or commercial purpose. The
15 attorneys of record for the parties shall exercise reasonable care to ensure that the information and
16 documents governed by this Protective Order are (a) used only for the purpose specified herein,
17 and (b) disclosed only to authorized persons.

18 4.2 Subject to Paragraphs 4.4-5.4, CONFIDENTIAL Material may be disclosed,
19 summarized, described, revealed or otherwise made available in whole or in part only in
20 accordance with the terms of this Order and only to the following persons:

21 a. any employee of a Party who is required in good faith to provide material
22 assistance in the conduct of the litigation of these actions, and who
23 executes a copy of the Undertaking attached hereto as Exhibit A. If a
24 Producing Party objects to the disclosure of CONFIDENTIAL material to
25 any such employee, the designated employee may not view that producing
26 party's CONFIDENTIAL Material, provided that the designating party

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1 may seek relief from the Court following a good faith meet and confer
2 effort with the Producing Party to resolve the objection.

- 3 b. Parties' internal counsel, and their legal, investigative, technical,
4 administrative and other support staff, engaged in the conduct of these
5 actions;
- 6 c. outside counsel for the Parties in these actions or other counsel who have
7 entered an appearance in these actions, their respective legal, investigative,
8 technical, administrative and other support staff, engaged in the conduct of
9 these actions on behalf of named Parties;
- 10 d. this Court, or any other court exercising jurisdiction with respect to these
11 actions, any appellate court(s), court personnel, jurors, alternate jurors, and
12 qualified persons (including necessary clerical personnel) recording, taking
13 or transcribing testimony or argument at any deposition, hearing, trial or
14 appeal in these actions;
- 15 e. any person designated by the Court upon such terms as the Court may
16 deem proper;
- 17 f. outside experts and consultants in the fields of marketing, development,
18 and/or approval of pharmaceutical products and their staff retained to
19 assist the parties in the conduct of these actions, subject to the provisions
20 of Paragraph 5.2 and so long as such person has executed a copy of the
21 Undertaking attached as Exhibit A;
- 22 g. outside experts and consultants in any other field (e.g., economic experts
23 and trial consultants) and their staff retained to assist the parties in the
24 conduct of these actions, so long as such person has executed a copy of the
25 Undertaking attached as Exhibit A;
- 26 h. persons or entities that provide litigation support services (e.g.,
27 photocopying; videotaping; translating; preparing exhibits or

1 demonstrations; organizing, storing, retrieving data in any form or medium;
2 etc.) and their employees and subcontractors, including any assistants
3 and/or mock jurors that professional jury or trial consultants may employ,
4 retained by outside counsel for a Party to whom it is reasonably necessary
5 to disclose the information for these actions and who will maintain the
6 confidentiality of such Confidential Discovery Material;

- 7 i. witnesses or potential witnesses in these actions and their counsel, as
8 permitted pursuant to the provisions of Paragraphs 6.1-6.3;
9 j. court reporters, videographers and translators; and
10 k. others as to whom the Producing Party has given written consent.

11 4.3 Subject to Paragraphs 4.4-5.4, HIGHLY CONFIDENTIAL Material may be
12 disclosed, summarized, described, revealed or otherwise made available in whole or in part only
13 in accordance with the terms of this Order, and only to the following persons:

- 14 a. Parties' internal counsel, and their legal, investigative, technical,
15 administrative and other support staff, engaged in the conduct of these
16 actions;
- 17 b. outside counsel for the Parties in these actions or other outside counsel who
18 have entered an appearance in these actions and regular and temporary staff
19 of such counsel to the extent necessary to assist such counsel in the conduct
20 of these actions;
- 21 c. outside experts and consultants in the fields of marketing, development,
22 and/or approval of pharmaceutical products and their staff retained to
23 assist the parties in the conduct of these actions, subject to the provisions
24 of Paragraph 5.2 and so long as such person has executed a copy of the
25 Undertaking attached as Exhibit A;
- 26 d. outside experts and consultants in any other field (e.g., economic experts
27 and trial consultants) and their staff retained to assist the parties in the

1 conduct of these actions, so long as such person has executed a copy of the
2 Undertaking attached as Exhibit A;

- 3 e. persons or entities that provide litigation support services (*e.g.*,
4 photocopying; videotaping; translating; preparing exhibits or
5 demonstrations; organizing, storing, retrieving data in any form or medium;
6 etc.) and their employees and subcontractors, including any assistants
7 and/or mock jurors that professional jury or trial consultants may employ,
8 retained by outside counsel for a Party to whom it is reasonably necessary
9 to disclose the information for these actions and who will maintain the
10 confidentiality of such Confidential Discovery Material;
- 11 f. witnesses or potential witnesses in these actions and their counsel, as
12 permitted pursuant to the provisions of Paragraphs 6.1-6.3;
- 13 g. the Court and its employees and the jury;
- 14 h. court reporters, videographers and translators; and
- 15 i. others as to whom the Producing Party has given written consent.

16 The parties anticipate that there may be a need for additional confidentiality protection for a
17 limited number of HIGHLY CONFIDENTIAL materials that contain highly sensitive, forward-
18 looking business information. Such material may be designated as “OUTSIDE COUNSEL EYES
19 ONLY,” and may not be shown to parties’ internal counsel notwithstanding Paragraph 4.3.a.
20 above, but may be shown to all remaining parties identified in Paragraph 4.3 subject to the terms
21 and conditions herein.

22 4.4 Irrespective of whether an individual has executed the CONFIDENTIAL or
23 HIGHLY CONFIDENTIAL Undertaking, this Order shall not apply to and, thus, does not restrict
24 any party’s use, for any purpose, of (1) its own CONFIDENTIAL and/or HIGHLY
25 CONFIDENTIAL Material, or (2) any documents, things, information or other material that, at
26 the time of disclosure in these actions, is publicly known through no unauthorized act of such
27 party or was lawfully developed or obtained independent of discovery in these actions.

1 Moreover, this Order shall not apply to and does not restrict any individual from reviewing or
 2 seeing any document generated or received by that individual or communicated to or known to
 3 that individual, and does not restrict any individual from reviewing or seeing any document
 4 containing information believed in good faith to be known to the individual. Notwithstanding the
 5 foregoing, any portions of the CONFIDENTIAL and/or HIGHLY CONFIDENTIAL Material
 6 that, on its face, was not communicated to or known to the individual shall be redacted before
 7 showing the document to the individual. Nothing in this Paragraph is intended to, or does,
 8 preclude a Party from taking action under Paragraph 10.3 below due to the conduct described in
 9 this Paragraph.

10 4.5 This Order shall not restrict any attorney who is a qualified recipient under the
 11 terms of Paragraphs 4.2(b)-(c) and 4.3(a) from rendering advice to his or her client that is a Party
 12 with respect to these actions, and in the course thereof, from generally relying upon his or her
 13 examination of CONFIDENTIAL and/or HIGHLY CONFIDENTIAL Material. In rendering
 14 such advice or in otherwise communicating with the client, the attorney shall not disclose directly
 15 or indirectly the specific content of any CONFIDENTIAL and/or HIGHLY CONFIDENTIAL
 16 Material of another Party or non-party where such disclosure would not otherwise be permitted
 17 under the terms of this Order.

18 4.6 If a party is served with a subpoena, discovery request in another action, or any
 19 other request seeking by legal process the production of documents, things, information or other
 20 material produced to it and designated as CONFIDENTIAL and/or HIGHLY CONFIDENTIAL
 21 Material in these actions, such party shall notify promptly the Producing Party so as to provide the
 22 Producing Party a reasonable opportunity to object to the production.

23 **5. PROCEDURES FOR DISCLOSURE OF “CONFIDENTIAL” AND “HIGHLY
 24 CONFIDENTIAL” INFORMATION**

25 5.1 Every person to whom CONFIDENTIAL and/or HIGHLY CONFIDENTIAL
 26 Material or information contained therein is to be disclosed, summarized, described,
 27 characterized, or otherwise communicated or made available in whole or in part, first shall be
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1 advised that the material or information is being disclosed pursuant and subject to the terms of
 2 this Order.

3 5.2 Furthermore, regarding those qualified recipients under the terms of Paragraphs
 4 4.2(f) and 4.3(c) to whom disclosure of CONFIDENTIAL and/or HIGHLY CONFIDENTIAL
 5 Material is sought, the Party seeking to disclose such Material shall give notice to the Producing
 6 Party as follows: Counsel for the Party seeking to make the disclosure shall provide written
 7 notice by electronic mail to counsel for the Producing Party, and all other Parties to these actions,
 8 that (1) sets forth the full name of the expert and the city and state of his or her primary residence,
 9 (2) attaches a copy of the expert's current resume, (3) identifies the expert's current employer(s),
 10 (4) identifies (by name and number of the case and location of court) any litigation in connection
 11 with which the individual has testified as an expert during the preceding four years, and
 12 (5) attaches an executed copy of the Undertaking attached hereto as Exhibit A. Counsel for the
 13 Party seeking to disclose such Material need not specifically identify the Designated
 14 CONFIDENTIAL or HIGHLY CONFIDENTIAL Material intended to be disclosed.

15 5.3 The Producing Party shall have seven (7) days after receiving notification pursuant
 16 to Paragraphs 5.2 within which to object to the proposed disclosure, as provided below; such
 17 disclosure shall not occur before the time for any objection by the Producing Party expires, and, if
 18 any such objection is made, before that objection is resolved, as provided below. Any such
 19 objection shall be made in writing by electronic mail to the counsel for the Party seeking to make
 20 the disclosure, and all other Parties to these actions. Failure to object within the time period set
 21 forth above shall be deemed consent.

22 5.4 Within seven (7) days of receipt of an objection, the Parties shall meet and confer
 23 to attempt to resolve their dispute. If the objection cannot be resolved by the Parties, the Party
 24 making the objection has ten (10) days to seek relief from the Court. If the Party making the
 25 objection seeks such relief from the Court, the intended disclosure shall not be made unless and
 26 until the Court enters an order authorizing such disclosure. The Party making the objection shall
 27 have the burden of proof that the intended disclosure should not occur. To discourage
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1 unwarranted objections and motions practice, a moving party whose objection is overruled shall
 2 pay expenses, including reasonable attorney fees, to the Party seeking to disclose the Material.

3 **6. EXAMINATION OF WITNESSES**

4 6.1 Any inventor or current employee of a Party may be examined at trial or upon
 5 deposition concerning any CONFIDENTIAL and/or HIGHLY CONFIDENTIAL Material of
 6 such Party.

7 6.2 Any expert witness may be examined at trial or upon deposition concerning any
 8 CONFIDENTIAL and/or HIGHLY CONFIDENTIAL Material.

9 6.3 Any other person may be examined as a witness at trial or upon deposition
 10 concerning any CONFIDENTIAL and/or HIGHLY CONFIDENTIAL Material which that person
 11 had lawfully generated, received or which was previously communicated to or known to that
 12 witness. During examination or preparation therefor, any such witness may be shown
 13 CONFIDENTIAL and/or HIGHLY CONFIDENTIAL Material which appears on its face or from
 14 other documents or testimony to have been generated or received by that witness or
 15 communicated to or known to that witness or which contains information believed in good faith
 16 to be known to the individual. Any portions of the CONFIDENTIAL and/or HIGHLY
 17 CONFIDENTIAL Material that, on its face, was not communicated to or known to the witness
 18 shall be redacted before showing the document to the witness.

19 **7. FILING PROTECTED MATERIAL**

20 Without written permission from the Producing Party or a Court order secured after
 21 appropriate notice to all interested persons, a Party may not file in the public record in this action
 22 any Confidential Discovery Material. A Party that seeks to file under seal any Confidential
 23 Discovery Material must comply with Civil Local Rule 79-5.

24 **8. INADVERTENT PRODUCTION OF PRIVILEGED MATERIAL**

25 8.1 If information subject to a claim of attorney-client privilege, work product
 26 immunity, or any other applicable privilege or immunity is produced inadvertently, the Parties
 27 shall comply with Fed. R. Civ. P. 26(b)(5)(B).

1 **9. OBLIGATIONS OF OUTSIDE COUNSEL**

2 9.1 It shall be the responsibility of outside counsel to ensure strict compliance with the
3 provisions of this Protective Order in their dealings with CONFIDENTIAL and/or HIGHLY
4 CONFIDENTIAL Material, and it shall be the responsibility of outside counsel to take reasonable
5 and proper steps to ensure that this Protective Order and all provisions thereof are made known to
6 any person who shall examine CONFIDENTIAL and/or HIGHLY CONFIDENTIAL Material as
7 provided herein. All persons responsible for determining that materials contain
8 CONFIDENTIAL and/or HIGHLY CONFIDENTIAL Material shall be familiar with this
9 Protective Order and the scope of its protection. All CONFIDENTIAL and/or HIGHLY
10 CONFIDENTIAL Material including any and all copies thereof shall be kept by the Receiving
11 Party in a place appropriately safe, given its status.

12 **10. OTHER**

13 10.1 Conclusion of the Action: Within sixty (60) days after entry of a final judgment or
14 dismissal with prejudice in these actions (including appeals or petitions for review) or the
15 execution of a settlement agreement among all the parties finally disposing of all issues raised in
16 these actions, outside counsel and all other persons having possession or control of another
17 party's CONFIDENTIAL and/or HIGHLY CONFIDENTIAL Material, including any briefs,
18 motions, pleadings, expert reports or other documents created during the course of these actions
19 that contain CONFIDENTIAL and/or HIGHLY CONFIDENTIAL Material, shall: (a) return all
20 CONFIDENTIAL and HIGHLY CONFIDENTIAL Material and any copies thereof to the
21 appropriate outside counsel who produced the CONFIDENTIAL and HIGHLY
22 CONFIDENTIAL Material; or (b) destroy such CONFIDENTIAL and HIGHLY
23 CONFIDENTIAL Material. Each party shall give written notice of such destruction to outside
24 counsel for the Producing Party. Counsel of record, however, may retain copies of all filings,
25 written discovery, and correspondence for archival purposes. Further, all notes, summaries, or
26 other documents prepared by attorneys, or outside experts/consultants designated as provided in
27 Paragraphs 10and 11, derived from or containing CONFIDENTIAL and HIGHLY
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1 CONFIDENTIAL Material, shall after the conclusion of the actions, be kept within the files of
2 trial counsel for the party creating such work product, or be destroyed.

3 10.2 Other Proceedings: By entering this order and limiting the disclosure of
4 information in this case, the Court does not intend to preclude another court from finding that
5 information may be relevant and subject to disclosure in another case. Any person or party
6 subject to this order who becomes subject to a motion to disclose another party's information
7 Designated CONFIDENTIAL and HIGHLY CONFIDENTIAL Material pursuant to this order
8 shall promptly notify the Producing Party of the motion so that the party may have an opportunity
9 to appear and be heard on whether that information should be disclosed.

10 10.3 Contested Designations: A Party shall not be obligated to challenge the propriety
11 of designating any CONFIDENTIAL and HIGHLY CONFIDENTIAL Material at the time such
12 designation is made, and failure to do so shall not preclude a subsequent challenge thereto. In the
13 event that a Party disagrees at any stage of these proceedings with the designation by the
14 Producing Party of any information as CONFIDENTIAL and HIGHLY CONFIDENTIAL
15 Material, the Parties shall try first to resolve such dispute in good faith on an informal basis. The
16 objecting Party shall first provide written notice to the Producing Party, identifying the
17 CONFIDENTIAL or HIGHLY CONFIDENTIAL Discovery Material whose designation it
18 challenges and setting forth the basis for the challenge. Except in the case of a challenge for more
19 than twenty (20) documents or more than twenty-five (25) pages of deposition testimony, within
20 fourteen (14) days of its receipt of written notice of the challenge to its designation, the Producing
21 Party shall meet and confer with the objecting Party in order to attempt to resolve any dispute
22 concerning the designation by agreement or stipulation. In the case of a challenge for more than
23 twenty (20) documents or more than twenty-five (25) pages of deposition testimony, the
24 challenging Party and the Producing Party shall meet and confer in good faith to establish a
25 reasonable timeframe for a response to the challenge. If the dispute cannot be resolved, the
26 objecting Party may seek appropriate relief from the Court, but the Party seeking to restrict
27 disclosure of information shall bear the burden of proof that it constitutes CONFIDENTIAL and
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1 HIGHLY CONFIDENTIAL Material. The objecting Party's motion or application to the Court
 2 shall identify with specificity the CONFIDENTIAL or HIGHLY CONFIDENTIAL Discovery
 3 Material that is the subject of the motion, but shall not disclose or reveal the contents of that
 4 material except in the manner prescribed by Paragraph 7 of this Protective Order. If such a motion
 5 or application is made, all Discovery Material so designated shall maintain CONFIDENTIAL or
 6 HIGHLY CONFIDENTIAL status pending a determination by the court as to its appropriate
 7 status.

8 10.4 Non-waiver: The production of Confidential Discovery Materials by a Party under
 9 the terms of this Order shall not be construed to mean that the Producing Party has waived any
 10 objection to the production, relevancy or admissibility of such Materials. Nothing contained
 11 herein shall preclude any Party from opposing any discovery on any basis.

12 10.5 Additional Parties: If an additional party joins or is joined in these actions, the
 13 newly joined party shall not have access to CONFIDENTIAL and HIGHLY CONFIDENTIAL
 14 Material until the parties agree to a supplemental Protective Order governing the protection of
 15 CONFIDENTIAL and HIGHLY CONFIDENTIAL Material.

16 10.6 Third Parties: Third Parties shall be treated as Parties for purposes of this
 17 Protective Order, except to the extent ordered otherwise by this Court or another court of
 18 coordinate jurisdiction. Any Third Party from whom discovery is sought in these actions may
 19 designate some or all of the documents, things, information or other material as
 20 CONFIDENTIAL and HIGHLY CONFIDENTIAL Material under this Protective Order. If it
 21 does so, then each Party to the action will have with respect to such CONFIDENTIAL and
 22 HIGHLY CONFIDENTIAL Material the same obligations which that Party has with respect to
 23 CONFIDENTIAL and HIGHLY CONFIDENTIAL Material of another Party to the action.
 24 Nothing in this Paragraph or this Protective Order is intended to, or does, excuse any Third Party
 25 from compliance with a duly served subpoena.

26 10.7 Attendance at Depositions: If a deposition concerns CONFIDENTIAL or
 27 HIGHLY CONFIDENTIAL Material, the Producing Party shall have the right to exclude from
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1 the portion of the deposition concerning such information any person not authorized in
2 accordance with Paragraphs 4.2-4.3 above to have access to such Material. In-house counsel
3 authorized to receive CONFIDENTIAL Material pursuant to Paragraph 10(b) shall only be
4 excluded from the portion of the deposition that contains questions and answers that reveal the
5 content of information designated HIGHLY CONFIDENTIAL, the disclosure of which is likely
6 to cause harm to the competitive position of the Producing Party, and which would have been
7 redacted from expert reports, pleadings, briefs or other papers filed with the Court in these actions
8 under seal as specified in Paragraph 7.

9 10.8 Unauthorized Disclosure: In the event of disclosure of any CONFIDENTIAL or
10 HIGHLY CONFIDENTIAL Material to a person not authorized to have access to such material,
11 the Party responsible for having made, and any Party with knowledge of, such disclosure shall
12 immediately inform outside counsel for the Producing Party whose CONFIDENTIAL or
13 HIGHLY CONFIDENTIAL Material has thus been disclosed of all known relevant information
14 concerning the nature and circumstances of the disclosure. The responsible Party also promptly
15 shall take all reasonable measures to ensure that no further or greater unauthorized disclosure or
16 use of such Material is made and to retrieve any Material improperly disclosed. Each Party shall
17 cooperate in good faith in that effort.

18 10.9 Termination of Access:

- 19 a. In the event any person or Party ceases to be engaged in the conduct of
20 these actions, such person's or Party's access to CONFIDENTIAL and
21 HIGHLY CONFIDENTIAL Material shall be terminated, and all copies
22 thereof shall be returned or destroyed in accordance with the terms of
23 Paragraph 10.1 hereof, except that such return or destruction shall take
24 place as soon as practicable after such person or party ceases to be engaged
25 in the conduct of these actions.
- 26 b. The provisions of this Order shall remain in full force and effect as to any
27 person or Party who previously had access to CONFIDENTIAL and

1 HIGHLY CONFIDENTIAL Material, except as may be specifically
 2 ordered by the Court or consented to by the Producing Party.

3 10.10 Modification:

4 a. Stipulations may be made, between Counsel for the respective Parties, as to
 5 the application of this Order to specific situations, provided that such
 6 stipulations are recorded in writing or contained in the record of any oral
 7 proceeding. Nothing contained herein shall preclude any Party from
 8 seeking an order of the Court modifying or supplementing this Order.

9 10.11 Duration: Even after the termination of these actions, the confidentiality
 10 obligations imposed by this Order shall remain in effect until a Producing Party agrees otherwise
 11 in writing or a Court order otherwise directs.

12 **SO STIPULATED.**

14 Dated: May 7, 2014

15 Respectfully submitted by:

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26
27 **ORDER**

28 PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: May ___, 2014

William H. Orrick
United States District Judge

EXHIBIT A

UNDERTAKING TO BE BOUND BY STIPULATED PROTECTIVE ORDER

I, _____ [print or type full name], of _____
_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective Order issued by
the United States District Court for the Northern District of California on May __, 2014 in the
In re Lidoderm Antitrust Litigation, MDL Docket No. 14-md-02521-WHO.

8 I agree to comply with and to be bound by all the terms of the Stipulated Protective Order.
9 I understand and acknowledge that failure to so comply could expose me to sanctions and
10 punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner
11 any information or item that is subject to this Stipulated Protective Order to any person or entity
12 except in strict compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the
14 Northern District of California for the purpose of enforcing the terms of the Stipulated Protective
15 Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print/type full address and tel. no.]
as my California agent for service of process in connection with this action or any proceedings
related to enforcement of this Stipulated Protective Order.

20 Dated: _____, 201_____ at (location): _____

21 Name: _____ Signature: _____